

REMARKS

The Office Action requests that Applicant (1) identify all claims the applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts; particularly to Claims 37 and 40 together in one response.

Applicant incorporates its remarks made previously in its responses and requests to the Patent and Trademark Office.

As indicated, Applicant has requested an interference with U.S. Patent No. 5,988,598 issued to Sicking et. al. (the "Sicking Patent"). Claims 1-6 of the Sicking Patent interfere with Claims 37 and 40 of the present application.

Applicant proposes the following counts:

Count 1:

A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener.

Count 2:

A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener;

said first fastener having a first connector having a first failure strength and a second connector having a second failure strength; and
said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.

All elements of Count 1 are recited in Claim 40 of the present application, and Count 1 is identical to Claim 1 of the Sicking Patent. Count 2 is identical to Claim 40 of the present application and corresponds substantially to Claim 2 of the Sicking Patent. The only difference is that, since Claim 40 is presented in independent form, it includes the limitations of both Claim 1 and Claim 2 of the Sicking patent.

Applicant provides the following claim charts showing how the proposed counts correspond to claims in the present application and the Sicking Patent.

**Count 1 (identical to Claim 1 of the
Sicking Patent)**

A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener;

Claim 40 of the present application

40. A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener;

said first fastener having a first connector having a first failure strength and a second connector having a second failure strength; and

said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.

**Count 2 (identical to Claim 40 of the
present application)**

A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener;

said first fastener having a first connector having a first failure strength and a second connector having a second failure strength; and

said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.

Claims 1 and 2 of the Sicking Patent

1. A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint connected at said first end by a first fastener to said upper post member and connected at said second end by a second fastener to said lower post member, said first fastener having a first failure strength less than a second failure strength of said second fastener.

2. The post of claim 1 wherein said first fastener further comprises: a first connector having a first failure strength, and a second connector having a second failure strength, said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post rotates about said first connector.

CONCLUSION

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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